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DEPARTMENT OF STATE A/CDC/MR	
REVIEWED BY <u>[Signature]</u>	DATE <u>9-30-82</u>
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IS AUTH. <u> </u>	REASON (S) <u> </u>
ENDORSE EXISTING MARKINGS ☐	
DECLASSIFIED ☐ RELEASE ☒	September 22, 1975
RELEASE DENIED ☐	
FOI EXEMPTIONS <u> </u>	

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Irwin Alexander Prager, Esq.
 Assistant General Counsel
 Equal Employment Opportunity Commission
 Washington, D.C. 20506

Dear Mr. Prager:

In response to your letters of March 14 and June 21, the Department has conducted an extensive review of the negotiating files on our bilateral treaties of friendship, commerce and navigation (FCN), including the 1953 FCN with Japan, and has carefully weighed the question of coverage of subsidiaries by this treaty, an issue in Spies v. C. Itel & Co. (Civ. No. 75-R-267, S.D. Tex.) and two other cases more recently decided in the district court in New York (Avigliano v. Sumitomo Shoji America, Inc., 77 Civ. 5641 [S.D.N.Y.] and Linskey v. Heidelberg Eastern, Inc., 77 Civ. 633 [E.D.N.Y.]).

The manner of coverage of subsidiaries is in many instances complex, making it necessary to rely on the intent of the negotiators to fully comprehend certain provisions. On further reflection on the scope of application of the first sentence of Paragraph 1 of Article VIII of the U.S.-Japan FCN, we have established to our satisfaction that it was not the intent of the negotiators to cover locally-incorporated subsidiaries, and that therefore U.S. subsidiaries of Japanese corporations cannot avail themselves of this provision of the treaty. In terms of selection of personnel, management or otherwise, the rights of such subsidiaries are determined by the general provisions of Article VII (1) and (4), which respectively provide for national and most-favored-nation treatment of the activities of such subsidiaries. While we do not necessarily agree

with all points expressed by the Court in deciding the Itoh case on the question of subsidiary coverage, we do concur in general terms with the Court's reasoning, and specifically in the result reached in interpreting the scope of the first sentence of Article VIII, paragraph 1.

Thank you for the opportunity to comment on this issue.

Sincerely yours,

S/S

James R. Atwood
Deputy Legal Adviser